

**UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 77925974
Filing Opposition Date July 14, 2010
Opposition Number 91195666

Philip Restifo

Plaintiff's

v.

**PLAINTIFF'S MOTION TO DENY
APPLICANT MOTION TO DISMISS
OPPOSITION NUMBER 91195666**

Power Beverages, LLC

Applicant

Plaintiff respectfully requests that the Trial and Appeal Board Deny Applicant Motion to Dismiss until the outcome of Plaintiff's Opposition Number 91181671 is determined by the Trial and Appeal Board.

Statements of Facts

Defendants application for the Trademark Ying Yang (Serial No. 77925974)

submitted on February 2, 2010 Owner Power Beverages, LLC

Defendants submitted Documents to the Trademark Trial and Appeal Board posted on July 14, 2010 Requesting Plaintiff's opposition to Power Beverages application for the trademark Ying Yang under international class 33 be dismissed.

Defendants Power Beverages LLC., Formally known as Aardvark Beverages LLC., address 201 Old Bleachery Road Greenville SC 29608 and 6180-A Atlantic Blvd.



09-22-2010

Norcross GA 30071.

Defendant Power Beverages LLC., Is a Defendant in the proceedings now before The Trademark Trial and Appeals Board Opposition Number 91181671 filed on 01/03/2008.

Argument

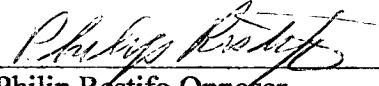
Plaintiff has stated in Opposition 91195666 that Applicant is a party to the proceedings now before Trial and Appeals Board Opposition Number 91181671 which states all the evidence as to the true owner of the Ying Yang Vodka and the first in commerce's, this case would have a direct bearing on Power Beverages LLC., filing for Ying Yang international Class 33 (Spirits) trademark filed on February 2, 2010.

We are respectfully requests that the Trial and Appeal Board Deny Applicant Motion to dismiss until the outcome of Opposition case number 91181671 is ruled on.

Exhibit A shows the original grounds of Opposition which would be the same grounds of Opposition for number 91195666.

Dated this 20 day of September 2010

Respectfully Yours

By: 
Philip Restifo Opposer
8101 W. Rosada Way
Las Vegas Nevada 89149

CERTIFICATE OF SERVICE

I certify that I Philip Restifo caused the above- named document to be deposited with the U.S. Postage prepaid, on the date and to the addressee(s) shown

Thomas L. Moses esq.
Monahan & Moses LLC
13-B W. Washington Street
Greenville SC, 29601-2734

Dated this 20 day of September 2010

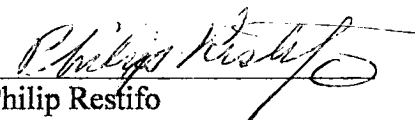
By: 
Philip Restifo

Exhibit "A"

NOTICE OF OPPOSITION

Mr. Philip Restifo and/or
Data Commodities Ltd
5424 South Cameron Street #105
Las Vegas, Nevada 89118
(702) 227-9395

The above-identified opposers believe that they will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same international class 33 mark.

The grounds for opposition are as follows:

1. The opposer, President of Data Commodities Ltd. Is the true rightful owner of the trademark in question.
2. That such mark was created, developed, designed, bottled, and sold in commerce by Data Commodities Ltd.,
3. That the applicant is not and was not, at the time of filing of its application for Registration the rightful owner of the said mark.
4. Data Commodities Ltd., has applied for Federal, State and County Label approvals and has received said approvals. There would be confusion caused by applicant's mark on the same goods and services opposer is bottling and selling product in commerce.
5. That there was no bone fide use of said mark in commerce by applicant prior or after to the filing of said mark.
6. That applicant does not have the Federal or State licenses to manufacture or sell the products with said mark attached.
7. That applicant does not produce any items with such mark rather wants to purchases products with said mark attached via opposer's company.

By: _____
Philip Restifo President
Data Commodities Ltd.

For all correspondence regarding this matter please send all information to 5424 S. Cameron Street #105 Las Vegas Nevada 89118. Telephone No: (702) 227-9395 Fax No: (702)227-0124

Opposers Liquor Licenses:

Federal Import and Wholesale liquor licenses Dated 12/23/1998

Federal label Approval from the ATF Dated 1/11/1999
State Of Nevada Liquor compliance Licenses Dated: 5/01/1999
Federal Label Approval from the ATF Dated: 6/1/2000
Federal Label Approval from the ATF 3 & 5 Year Old Dated 6/1/2000
Federal Label Approval from the ATF Dated: 8/31/2000
Federal Special Tax Stamp Dated 7/01/1999
State of Illinois liquor licenses Dated 11/28/2000
State of California liquor licenses Dated: 12/12/2000
State of Alabama liquor Licenses Dated 4/27/2001
Federal Label Approval from ATF all Ages Dated: 11/16/2001
State of Florida Brand Registration Renewal Dated: 6/4/2001
Brand & Label Registration State of California Dated : 11/23/2007
State of Georgia liquor licenses Date: 10/10/2001
State of Arizona Liquor licenses Dated: 11/30/2001
State of Maryland liquor licenses Dated: 01/28/2002
Federal Import and Wholesale Liquor Licenses amended 12/9/2002
State of Nebraska liquor Licenses Dated: 4/15/2003
State of New Mexico Liquor Licenses Dated: June 30 2003
State of North Dakota liquor licenses Dated 8/9/2005
State of Texas liquor licenses Dated 6/12/2005
State of New Jersey liquor Licenses Dated: 4/25/2006
Federal Label Approval Ying Yang Vodka 6/15/2006